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Opinion No. 01-110

Hamblen County General Sessions Judge's Salary

QUESTIONS

Tenn. Code Ann. § 16-15-5003 provides for the method by which general sessions judges' salaries are calculated. Under that statute, judges in counties of the first class will receive different levels of compensation for the term beginning September 1, 1998.

1. Does this statute, to the extent that it provides for different salaries for judges in counties of the first class who exercise the same jurisdiction, violate the Equal Protection Clauses of the Tennessee and United States Constitution?

2. Does the statute contain repugnant provisions with separate minimum levels within the same class?

OPINIONS

1. No. We think a court would conclude that the discrepancies noted in the request are rationally related to a legitimate state interest in retaining experienced judges.

2. No, the statute provides that general sessions judges in counties of the first class who are not similarly situated will receive different salaries.

ANALYSIS

1. Constitutionality of Compensation Provision for General Sessions Judges in Counties of the First Class

This opinion concerns the statutory scheme providing for the salaries of general sessions judges in counties of the first class. As a result of the circumstances further described below, judges of counties of the first class exercising the same jurisdiction will receive different levels of compensation.

Under Tenn. Code Ann. § 16-15-5001(a), for the purpose of determining the compensation of a

general sessions judge, the counties of the State are divided into eight classes based on that county's population under the most recent census. Tenn. Code Ann. § 16-15-5003 sets forth the method by which the salaries for general sessions judges are to be calculated. Under Tenn. Code Ann. § 16-15-5003(a), the annual base salary for general sessions judges in counties of the first class is set at $70,000. The statute does not provide for any salary supplements for judges in counties of the first class who exercise additional types of jurisdiction. The statute provides that judges in counties of the second through seventh class may receive salary supplements if they exercise additional types of jurisdiction. Under Tenn. Code Ann. § 16-15-5003(a)(3), the annual base salary for a general sessions judge in a county of the third class is set at $40,000. A judge in a county of the third class may also receive a maximum of $40,000 in salary supplements for exercising additional types of jurisdiction. The statute also provides for annual cost of living adjustments to the salaries of general sessions judges. Under Tenn. Code Ann. § 16-15-5003(i)(2), each full-time general sessions judge in a county must receive the same compensation as the most highly compensated general sessions court judge in that county if such judges have the same jurisdiction. Under Tenn. Code Ann. § 16-15-5003(j), no judge of a general sessions court may be paid a salary that is greater than the salary paid to a judge of a circuit court.

Subsection (d) of Tenn. Code Ann. § 16-15-5001 provides:

> (1) If a county is in one (1) class as provided in this section on September 1 of the year in which a judge is elected to office, and after such date such county moves into a lower class on the basis of a subsequent federal census, the salary of such judge shall not be diminished during the time for which such judge was elected.
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> (2) If a county is in one class as provided in this section on September 1, of the year in which a judge is elected to office and after such date, such county moves into another class on the basis of a subsequent census, the salary of such judge shall be determined by the higher classification for the remainder of the term for which the judge was elected.

Subsection (g) of Tenn. Code Ann. § 16-15-5003 provides:

> The compensation, supplement and annual adjustment provisions of this section are to be construed as minimum levels. Nothing in this part shall be construed as prohibiting a county, by private act, from compensating its general sessions judge or judges at levels in excess of what is required by this part. Any private or public act in effect on September 1, 1990, that provides greater compensation for a general sessions judge than is required by this section shall, to the extent of the judge's amount of compensation, prevail over the provisions of this part, and the base salary of such judge shall be the salary paid to the holder of that office on August 31, 1990, pursuant to such public or private act plus a percentage increase thereto equivalent to the same percentage increase herein given by subsection (a) to a judge of a Class 6 county. Nothing in this part shall prevent a county from establishing and funding the position of part-time general sessions judge in a county

with a full-time general sessions judge.

Similarly, Tenn. Code Ann. § 16-15-5003(i)(4)(A) provides:

> The compensation, supplement and annual adjustment provisions of this section are to be construed as minimum levels. The compensation schedule established by this part is a comprehensive plan, and no salary supplement in excess of the supplements provided by this part shall be available to a general sessions judge unless expressly provided and funded by a private act.

As the request indicates, under various provisions of this statutory scheme different judges in counties of the first class exercising the same jurisdiction and who were reelected to office in 1998 will be entitled to different salaries. General sessions judges in counties of the first class who were receiving salary supplements under a statute, since repealed, as of August 31, 1998, will continue to receive a salary that reflects those supplements. The reason for this result is that, under Tenn. Code Ann. § 16-15-205, general sessions judges were entitled to salary supplements for exercising juvenile and probate court jurisdiction. The General Assembly expressly repealed that statute in 1993. But our Office concluded that Class 1 judges who took office before the repeal were entitled to continue receiving these supplements until the end of their current term — in most cases, until August 31, 1998. Op. Tenn. Atty. Gen. 94-44 (April 4, 1994). In 1997, the General Assembly amended Tenn. Code Ann. § 16-15-5003 to add subsection (i) regarding the salaries of general sessions judges for the term beginning September 1, 1998. That subsection provides:

> Effective September 1, 1998, the annual salary for a general sessions court judge shall be increased over the annual compensation and supplements and annual adjustments which each judge *actually received as of August 31, 1998*, by the lesser of:
> (A) Ten thousand dollars ($10,000); or
> (B) Twenty percent (20%) of such annual compensation and supplements and annual adjustments as of August 31, 1998.

(Emphasis added). Thus by its terms, Tenn. Code Ann. § 16-15-5003(i) provides that each judge reelected to office was entitled to receive an increase over the salary and supplements he or she *actually received* on August 31, 1998. Presumably, at least some judges in class one counties were still receiving additional jurisdictional supplements under Tenn. Code Ann. § 16-15-205 and Opinion 94-44 as of August 31, 1998. Those judges therefore received a $10,000 increase over their *actual* August 31, 1998, salary. If a class one judge was actually receiving jurisdictional supplements on August 31, 1998, then that judge's salary for the 1998 term will continue to reflect those jurisdictional supplements. If a class one judge was not actually receiving jurisdictional supplements on that date, that judge's salary for the 1998 term will not reflect those jurisdictional supplements. Further, a judge who came into office after Tenn. Code Ann. § 16-15-205 was repealed may constitutionally be paid a salary that does not reflect the supplements under that statute. Op. Tenn. Atty. Gen. 01-29 (March 5, 2001).

A general sessions judge in a county of the third class whose county moved into the first class as a result of the 2000 census will receive a different salary from the two classes of judge reelected to office discussed above. The base salary of a judge in counties of the third class is $40,000. Tenn. Code Ann. § 16-15-5003(a)(3). Under a provision enacted in 1997, general sessions judges in counties of the third class are entitled to receive a maximum of $40,000 in salary supplements for exercising additional jurisdiction. Tenn. Code Ann. § 16-15-5003(b)(3). Since general sessions judges in counties of the first class are no longer entitled to any salary supplement for exercising additional jurisdiction, a judge in a county of the third class who receives the maximum salary supplement for additional jurisdiction could, in fact, be receiving a somewhat higher salary than some judges in counties of the first class. Where, under the 2000 census, a county of the third class is reclassified as a county of the first class, the general sessions judge would therefore be entitled to a lower salary than the salary he or she received as of the beginning of the judicial term. But under Tenn. Code Ann. § 16-15-5001(d)(2), the salary of the judge will be determined by the higher classification for the remainder of the term for which the judge was elected. This Office concluded that, under this provision, a judge of a county of the third class whose county has become a county of the first class should continue to be paid the higher salary for the remainder of the judicial term. Op. Tenn. Atty. Gen. 00-123 (August 4, 2000).[1]

As a result, as the request notes, different general sessions judges in counties of the first class are entitled to different compensation, depending on their situations. The salaries will vary for judges who were actually receiving salary supplements under the old statute and Opinion 94-44 as of August 31, 1998, and who were reelected to office; judges who were not actually receiving salary supplements as of that date and who were reelected to office; and judges whose county, at the beginning of their term, was classified in the third class and whose county has now been reclassified as a county of the first class. The request asks whether this arrangement violates the Equal Protection Clause of the Tennessee or United States Constitution. Article XI, Section 8 of the Tennessee Constitution, which provides in part:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

Whether or not a statute violates Article XI, Section 8 depends upon whether it suspends a general law, "mandatorily applicable statewide." *Rector v. Griffith*, 563 S.W.2d 899, 904 (Tenn. 1978). Where

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[1] This opinion specifically concerned Cumberland County. In fact, 2000 census results indicate that Cumberland County should be reclassified as a county of the second class. A review of the census results indicates that Tipton County, which was a county of the third class under the 1990 census results, became a county of the first class under the 2000 census results. Tipton appears to be the only county where this change occurred.

a statute does not suspend any other laws, or such laws are not "mandatorily applicable statewide," then the General Assembly possesses "almost unlimited discretion to enact private legislation affecting the structure and organization of local government units." *Id.*

The first question, therefore, is whether these different salaries for general sessions judges in the same class county violate a statute of mandatory statewide application. As cited above, Tenn. Code Ann. § 16-15-5003 expressly provides that a county may, through a private act, elect to pay a general sessions judge a salary in excess of the levels set forth in the statute. For this reason, we think a court would conclude that Tenn. Code Ann. §§ 16-15-5001, *et seq.*, are not statutes of mandatory statewide application. Therefore, the fact that different judges in the same class receive different salary levels does not violate Article XI, Section 8 of the Tennessee Constitution because the different arrangements do not suspend a statute of mandatory statewide application.

Even if a court concluded that the statutory scheme does set forth a statute of mandatory statewide application, we think the differences in salary levels discussed above are constitutional under Article XI, Section 8 and the Equal Protection Clause of the United States Constitution. Article XI, Section 8 and Article I, Section 8 of the Tennessee Constitution, and the Fourteenth Amendment to the United States Constitution all guarantee to citizens the equal protection of the laws, and the same rules are applied under them as to the validity of classifications made in legislative enactments. *Brown v. Campbell County Board of Education*, 915 S.W.2d 407, 412 (Tenn. 1995), *cert. denied*, 116 S.Ct. 1852 (1996). The right of equal protection of the law guarantees that all persons similarly situated will be treated the same. *Hartford Steam Boiler Inspection and Insurance Company v. Harrison*, 301 U.S. 459, 57 S.Ct. 583. (1937). But equal protection of the law does not require equality of treatment where there is a reasonable and material difference between the classes of persons in question. *Rinaldi v. Yeagar*, 384 U.S. 305, 86 S.Ct. 1497; *Graham v. West Virginia*, 224 U.S. 616, 32 S.Ct. 582 (1966).

A statutory scheme that involves no suspect classification and does not infringe on a fundamental right is subject to review under the rational basis test. Under that test, where a group possesses distinguishing characteristics relevant to the interests the State has the authority to implement, a state's decision to act on the basis of those differences does not give rise to a constitutional violation. *Board of Trustees of University of Alabama v. Garrett*, __ U.S. __, 121 S.Ct. 955 (2001). Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. *Id.* The State need not articulate its reasoning at the moment a particular decision is made; rather, the burden is upon the challenging party to negate any reasonably conceivable state of facts that could provide a rational basis for the classification. *Id.*

In the present case, the statutory scheme ensures that an incumbent judge will not experience a pay cut when his or her 1990 term expires, and he or she begins a new term, or when, as a result of the 2000 census, the county where he or she was elected to office is placed in a different class. We think this result is rationally related to the legislative interest of encouraging experienced judges to remain in office. For this reason, we think there is a rational basis for the different methods of calculation. *See, e.g., Gulbrandson*

v. Carey, 272 Mont. 494, 901 P.2d 573. (1995), *rehearing denied* (1995) (a statute providing increased retirement benefits to judges who retired after its effective date was rationally related to the legislative purpose of providing an incentive for judges then serving to remain on the bench). For this reason, we think a court would conclude that the statutes for determining the salary of judges in counties of the first class, as interpreted above, comply with the Equal Protection Clause of the Tennessee and the United States Constitution.

2. Repugnant Provisions with Separate Minimum Levels Within the Same Class

The second question is whether the statute contains repugnant provisions with separate minimum levels within the same class. The question appears to be whether the statute, as interpreted, is internally inconsistent or contradictory. As the discussion above indicates, we think the statute provides that differently situated judges in counties of the first class will receive different salary levels. We find no internal inconsistency or contradiction in this result.

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